

# SUPREME COURT OF ARKANSAS

No.

Opinion Delivered: 12-11-08

IN RE: ADOPTION OF RULE  
1.9, RULES OF CRIMINAL  
PROCEDURE

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## PER CURIAM

In February 2007, we adopted Administrative Order 19, which governs the public's access to court records. In our *per curiam* order we asked our Committees on Civil and Criminal Practice to study this comprehensive new Administrative Order and recommend any needed changes in our court rules. On October 23, 2008, we adopted the recommendations of the Civil Practice Committee for changes in numerous rules. *See In Re: Rules of Civil Procedure 5, 11 and 58; Administrative Orders 19 and 19.1; Rules of Appellate Procedure – Civil 6 and 11; Rules of Supreme Court and Court of Appeals 1-2, 2-1, 2-3, 2-4, 3-1 and 4-1* (October 23, 2008).

Based on the rules framework that has been adopted, the Criminal Practice Committee recommends the adoption of Rule of Criminal Procedure 1.9. We agree with this approach and adopt the rule as set out below to be effective January 1, 2009. We reiterate what we said in our October 23<sup>rd</sup> order:

These rule changes are comprehensive and significant. Starting on January 1, 2009, litigants and their lawyers must, in so far as possible, first eliminate all confidential information from all court filings. If the information is essential to the case, then litigants and their lawyers must redact it in the publicly available copy of the filed document and file a duplicate, unredacted copy under seal for use by the parties and

the court. These new procedures will start implementing Administrative Order 19's careful balance between the public's right to access their courts' records with litigants' rights to keep confidential information private. We expect that refinements will be needed. We therefore encourage the bench and bar to suggest further rule changes based on their experience with these procedures in practice in 2009.

*Id.*

Today, we ask the criminal bench and bar to focus on the pleadings and court forms as we start implementing Administrative Order Number 19 with an eye to improvements. We expect good faith in attempting to comply with Administrative Order Number 19, but we know that there will be lapses, and we counsel leniency regarding enforcement in the early stages.

## **Rules of Criminal Procedure**

### **Rule 1.9. Compliance with Administrative Order 19 – Confidential Information.**

Administrative Order Number 19 requires that “confidential information” be excluded from the “case record,” as those terms are therein defined. Every pleading, motion, response, order, and other paper filed in a case, and any document attached to any of them, must comply with the protective requirements for confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the redaction and filing procedure established by Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes: (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal.

**Reporter's Note:** Administrative Order 19 requires that any necessary and relevant confidential information in a case record must be redacted. Unrepresented parties, counsel, and judges must follow the redaction/duplicate-filing-under-seal procedure outlined in Rules of Civil Procedure (5)(c)(2)(A) & (B) and 58 for all case records, as that term is defined by Administrative Order 19 Section III (A)(2), and which includes all pleadings and papers and any attached materials. *See* Reporter's Notes, 2008 Amendment to Rules of Civil Procedure 5 and 58.